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4 Attorneys for: Plaintiff Christopher Upham
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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 CHRISTOPHER UPHAM,)
11 Plaintiff,)
12 vs.) **CASE NO. CV 08 1859 MMC**
13 THE PERSONAL REPRESENTATIVE)
OF THE ESTATE OF PETER M. FOX;) **CHRISTOPHER UPHAM'S CASE**
14 HELENA F. FOX, Individually and) **MANAGEMENT STATEMENT AND**
as Guardian Ad Litem for) **[PROPOSED] ORDER**
15 REBECCA H. FOX and ROBERT G. FOX,)
Minors,)
16 Defendants.)
17

18 Plaintiff submits his Case Management Statement herewith. A proposed order is not
19 applicable at this time.

20 **Status of the Case.**

21 Plaintiff filed this action on April 7, 2008, naming as defendants, The Personal
22 Representative of the Estate of Peter M. Fox, deceased, Helena F. Fox and the Guardian Ad
23 Litem(s) for Rebecca H. Fox and Robert G. Fox. It was at all times plaintiff's intention to file an
24 application for subsequent administration in Case Number: 2002 ES 0700012 venued in the
25 Probate Court of the County of Beaufort, State of South Carolina. The purpose of the intended
26 probate action is to have the South Carolina Probate Court appoint a personal representative of
27 the Estate of Peter M. Fox, deceased, and guardian ad litem(s) for the minor defendants, and
28 thereafter request this Court to allow an amendment naming the duly appointed personal

2 On or about April 21, 2008 an Application/Petition for Subsequent Administration was filed
3 in the Probate Court. On or about April 28, a Supplement to Application/Petition for Subsequent
4 Administration was filed in the Probate Court. A summons was duly issued and defendant,
5 Helena F. Fox, was duly served. The matter was set for hearing on July 1, 2008.

6 On or about June 18, 2008, defendant Helena F. Fox, through her attorney Henry E.
7 Grimball, filed a motion for continuance. Thereafter, Helena F. Fox filed a Rule 12(B) Motion to
8 Dismiss plaintiff's Application/Petition for Subsequent Administration.

9 The Probate Court continued the hearing on plaintiff's Application/Petition for Subsequent
10 Administration and defendant's Motion to Dismiss to August 7, 2008. Documentation will be
11 provided to this court by counsel at the Initial Case Management Conference scheduled for July
12 18, 2008.

13 Counsel for plaintiff intends to request at the Initial Case Management Conference, pursuant
14 to Federal Rule 4 (m), that the 120 day period in which to serve the summons and complaint be
15 extended for a reasonable time which would allow the South Carolina Probate Court to rule on
16 the pending matters.

17 Counsel for plaintiff intends to address with this court the matter of amended the summons
18 and complaint to name real party defendants should plaintiff prevail on his Application/Petition
19 for Subsequent Administration at the Initial Case Management Conference.

20 A. Description of the case:

21 1. A brief description of the events underlying the action:

22 Plaintiff invested a sum in excess of \$300,000.00, in a real estate venture with Peter M.
23 Fox, now deceased. In this action, plaintiff alleges fourteen causes of action consisting of breach
24 of contract, breach of fiduciary duty, conversion, intentional misrepresentation, negligent
25 misrepresentation, concealment of material facts, conspiracy to breach fiduciary duties,
26 conspiracy to convert, conspiracy to defraud, accounting, unjust enrichment, injunction,
27 constructive trust and fraud and misrepresentation.

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2. The principal factual issues which the parties dispute:

Due to the status of the case, information regarding the factual issues which the parties dispute is not at this time available.

3. The principal legal issues which the parties dispute:

Due to the status of the case, information regarding the legal issues which the parties dispute is not at this time available.

4. Other issues which remain unresolved for the reason state below and the parties' proposed resolution:

Due to the status of the case, other issues are unknown at this time.

5. The parties who have not been served and the reasons for said lack of service:

Discussed in the initial status of the case, infra.

6. The additional parties who the below-specified parties intend to join and the intended time frame for such joinder:

Plaintiff intends to substitute the personal representative of Peter M. Fox, as a defendant when such person is known and to substitute the guardian ad litem(s) for the minor defendants when such person(s) is known.

Section B. Not applicable at this time.

Section C. Not applicable at this time.

Dated: 7/15/08

LAW OFFICE OF DOUGLAS STENZEL

By: 
DOUGLAS STENZEL

Attorney for Christopher Upham

I, the undersigned, am a resident of the County of Riverside, State of California, over the age of eighteen years and not a party to the within action. I am employed by the Law Office of Douglas Stenzel at 1111 Tahquitz Canyon Way, Suite 121, Palm Springs, California 92262.

On **July 15, 2008**, I served the within **CHRISTOPHER UPHAM'S CASE MANAGEMENT STATEMENT AND [PROPOSED] ORDER** on the interested parties in said action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

NO PARTIES TO SERVE AT THIS TIME

I am "readily familiar" with the firm's practice and collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Palm Springs, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 7-15-08


DEBI BROUILLETTE